

USING AND ABUSING THE FINANCIAL MARKETS: MONEY LAUNDERING AS THE ACHILLES' HEEL OF TERRORISM

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1. INTRODUCTION

Those who finance terrorist attacks and rejoice in the murder of innocent victims are no different from those who plant the bombs or carry the backpacks. Money is the lifeblood of terrorism, and this master terrorist financier richly deserves the maximum sentence imposed today.¹

Both the academic and operational sides of counterterrorism

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¹ Press Release, United States Attorney's Office, Eastern District of New York, Statement of United States Attorney Roslynn R. Maus Kopf on Sentencing of Mohammed Al Hassan Almoayad (July 28, 2005), available at <http://www.usdoj.gov/usao/nye/pr/2005/2005jul28a.html>.

have largely focused on questions pertaining to military action. This has led to voluminous scholarship on topics of interrogation standards, detainee status, targeted killing, and executive powers, to name a few. However, despite the importance of such discussions, significant attention needs to be given to the powers behind the "on-the-ground" terrorists. Specifically, attention must be given to the individuals who finance terrorists; as such, financiers themselves need to be considered terrorists.

There may be hundreds of men and women willing to carry a bomb, but operationally eliminating one of them merely makes room for another. However, only a small number of people act as financiers of such attacks. Thus, while the use of military and law enforcement in counterterrorism operations achieves the "on-the-ground" objectives of rooting out terrorists, legislators must take proactive steps to permanently close the loopholes easily used by unscrupulous investors.² Terror financiers are fewer and further between and thus have a far greater individual impact on terrorism themselves. Therefore, eliminating a single terror financier will have a greater impact on preventing attacks than will merely eliminating a few bomb-carriers. As such, the bull's-eye of counterterrorism must be expanded to larger concentric circles that include not only the fighters, but also those providing material support. This discussion does not argue for the killing of such financiers, but rather for an acknowledgment that these individuals must be pursued with the same intensity as the bomb-carriers themselves.

In order to fully understand both terrorism and this discussion in particular, it is necessary to recognize the fact that finances are the engine of the terrorist train. However, in taking proactive steps against terror financing, governments must recognize and balance an equally imperative consideration—the freedom of religion.

As the following discussion will illuminate, terrorists have discovered various methods of using the financial markets to fund their activities. For instance, they use the investment realm, the banking systems, and particularly the informal value transfer system of *hawalas*.³ The U.S. government must react by eliminating the unscrupulous use of these systems, which are modern day

² Unscrupulous investors are defined as individuals using the financial markets and systems for purposes of money laundering and terror financing.

³ *Hawalas* are defined as informal banking networks prevalent in Middle Eastern culture.

versions of money laundering. In addressing money laundering and terrorism financing, it is necessary first to establish the base understanding of what tools for fighting terrorism financing were in the government's arsenal before September 11, 2001.

In short, the goal of this Article will be first to show one of the most powerful and dangerous aspects of terrorism—the use of regular financial markets. From there we will examine the nature of the laws prior to the 9/11 attacks to determine whether approaching terrorism financing in the same way as traditional money laundering was a proper venture. Ultimately, the discussion below, as well as the 9/11 attacks themselves, will show that such treatment was not, in fact, sufficient. Lastly, the conclusion of this Article will undertake the task necessary in any counterterrorism discussion—the act of balancing competing interests. Specifically, the government has an interest in protecting its citizenry. A potentially competing interest is the interest in individuals' freedoms, particularly the right to freely exercise religion. Weighing back in favor of the government's interest, then, is the fact that many unscrupulous uses of financial networks occur under a false pretense of religious exercise.

Throughout this morass of interests, the concluding recommendations highlight that the answers are neither purely governmental nor individual. Rather, the government and the people must each take up their own responsibilities to effectuate an end to the abuse of financial markets in the name of terrorism financing.

2. WHAT IS TERRORISM FINANCING?

2.1. *Money Laundering Defined*

Money laundering is the “process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate.”⁴ This “cleansing” of money has long been a mainstay of criminal activity in the United States as the cleansing facilitates hiding criminally derived proceeds.

The traditional method of laundering money requires the

⁴ PRESIDENT'S COMM'N ON ORGANIZED CRIME, INTERIM REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL, *THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTIONS, AND MONEY LAUNDERING* 7 (1984).

successful completion of three steps: (1) the launderer must place the “dirty” money into a legitimate enterprise; (2) these monies are layered through multiple and separate transactions so as to obscure the origins of the money; and (3) the now “clean” money is brought into the legitimate financial community through bank notes, loans, or other market-based instrumentalities.⁵ This discussion, however, becomes all the more important—and dangerous—when taken beyond the domestic criminal context and into the international world of financing terrorism.

The discussion of money laundering and the governmental reaction thereto is important to this Article, where we seek to identify both the successes and failures of curbing terror financing. This preliminary discussion of money laundering is important because prior to 9/11, anti-money laundering legislation represented the sole weapon to stop terrorism financing, a set of laws that the attacks of 9/11 showed to be inadequate. Thus, the examination of anti-money laundering legislation included below will show that the preexisting legislative mindset equating terrorist financiers with money launderers is improper and in need of further revamping.

2.2. Informal Value Transfer Systems as a Method of Money Laundering

Money laundering in the terror financing context is most commonly implemented through the transnational transferring of money and property. Specifically, the use of Informal Value Transfer Systems (“IVTS”)⁶ is commonly referred to as “underground banking” because, although operating akin to a banking system, the IVTS does so without participating in the formal requirements of institutional banking.⁷ However, calling such networks “underground banks” does not accurately portray the operation of an IVTS. The IVTS is primarily a system for the transfer of money and assets rather than an actual provider of full

⁵ See Teresa A. Adams, *Tacking on Money Laundering Charges to White Collar Crimes: What Did Congress Intend, and What Are the Courts Doing?*, 17 GA. ST. U. L. REV. 531, 535–38 (2000) (describing the three basic stages of money laundering).

⁶ One example of an IVTS at issue for this discussion is the system of money transfer through *hawalas*.

⁷ See Walter Perkel, *Money Laundering and Terrorism: Informal Value Transfer Systems*, 41 AM. CRIM. L. REV. 183, 183–84 (2004) (describing the IVTS and noting that they “exist outside of the modern banking system . . .”).

banking services.⁸ These networks are commonly used in terror financing for their ability to move funds around the world without the actual movement of a single traceable dollar.⁹

Adding to the complexity of finding improper uses of IVTS networks, these networks are oftentimes operated openly and legally, as there is no illegality involved in solely transferring value. Making these networks even harder to locate and monitor, most IVTS agents operate numerous legitimate business ventures.¹⁰ Creating another layer in this discussion of how the government ought to respond to abuses of the IVTS system without infringing on the protected freedom of religious exercise, in many nations such networks are the sole means of value transfer often used out of religious duty.¹¹

Specifically, an IVTS operates not by exchanging money, which would be traceable, but rather through the exchanging of debts, where the only tracking method is a balance sheet.¹² In transacting these debt transfers, an IVTS agent will often use untraceable actions like false pricing on imports or exports, in-kind payments, trade diversion schemes, or the use of pre-paid phone cards.¹³

2.3. Government Responses to Money Laundering

A preliminary discussion of the government's response to money laundering in the 1980s sets the proper background for the discussion to follow. This initial discussion will show where the law stood leading up to 9/11, thereby allowing for a more thorough analysis of the legislative successes and failures later in this Article.

The pervasiveness of money laundering in the United States

⁸ *Id.*

⁹ See Christopher Cooper & Ian Johnson, *Ongoing Concerns: Money Network Tied to Terrorism Survives Assault*, WALL ST. J., Apr. 22, 2002, at A1 (describing *hawalas* as networks that "move[] money on the basis of personal connections and promises to pay, not by an actual transfer of money through banks.").

¹⁰ Oftentimes, the IVTS agent also works in the areas of travel services and used cars. However, some IVTS agents sell illicit drugs and stolen goods.

¹¹ See *infra* Section 3.3.1 (describing *hawalas*).

¹² See Cooper & Johnson, *supra* note 9 (describing the operation of an IVTS).

¹³ U.S. DEP'T OF TREASURY, A REPORT TO THE CONGRESS IN ACCORDANCE WITH SECTION 359 OF THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001 (USA PATRIOT ACT) 19-26 (2002), available at <http://www.fincen.gov/hawalarptfinal11222002.pdf>.

during the 1980s brought about the Money Laundering Control Act of 1986 ("Act," "1986 Act," or "Money Laundering Act").¹⁴ The Act was intended to establish liability for an individual who conducts a financial transaction with knowledge that the funds' origins are either illegal or illicit.¹⁵ Specifically, the 1986 Act set out to bar all "monetary transaction[s] in criminally derived property" in excess of \$10,000.¹⁶ This Act represented the government's initial action aimed at the money launderer specifically, as prior governmental enactments focused on the movement of illicit monies by financial institutions and often overlooked the individual altogether.¹⁷

The 1986 Act also served to specifically define what acts would constitute money laundering. Specifically, the legislation includes previously used definitions of income from legislative acts that responded to organized crime, including prostitution, gambling, drug trafficking, and violations of the Racketeer Influenced and Corrupt Organizations Act.¹⁸ The 1986 Act further broadens the definition of money laundering to include proceeds from copyright infringement, espionage, trading with the enemy, and violations of the Internal Revenue Code.¹⁹

For the discussion of terror financing, the 1986 Act offers an initial lesson showing that definitions must be broad so as to impact all actors. Further, the 1986 Act provides another important example for this discussion as it not only bans the specific criminal act of laundering money, but it has much greater impact by (1)

¹⁴ Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956–57 (2000).

¹⁵ *Id.*

¹⁶ *Id.* § 1957(a). According to 18 U.S.C. § 1957(f)(1), a monetary transaction is "the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution . . . 'but does not include' any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution."

¹⁷ See Mark R. Irvine & Daniel R. King, *The Money Laundering Control Act of 1986: Tainted Money and the Criminal Defense Lawyer*, 19 PAC. L.J. 171, 176–77 (1987) (noting the absence of explicit references to individuals in the prior regulations).

¹⁸ Andres Rueda, *International Money Laundering Law Enforcement & the USA PATRIOT ACT of 2001*, 10 MICH. ST. U. DETROIT C.L. J. INT'L L. 141, 147–49 (2001) (describing the reach of the 1986 Act); see also 18 U.S.C. § 1961 (2000) (defining racketeering activities).

¹⁹ Rebecca Guinn & Bruce Malloy, *Outline of United States Money Laundering and Related Criminal Statutes*, in GAMING ENFORCEMENT E-77 (Robert E. Hauberg, Jr. ed. 1997).

making illegal *any use* of such funds (2) in perpetuity, without a statute of limitations.²⁰

After the 1986 Act, but before the 9/11 attacks morphed the money laundering issue into a terror financing issue, enforcement mechanisms against money laundering were found in 18 U.S.C. §§ 1956–57. However, despite the success of this legislation against money laundering, these sections raise concerns for the fight against terrorism financing in a post-9/11 world.

Section 1956(a)(1) was enacted to focus on the transactional aspect²¹ of money laundering, where the statute only applies if the transaction specifically handles monies received from illegal ventures.²² Thus, although this statute may be effective in the campaign against typical crime-related money laundering as such money is usually derived from the sale of drugs, prostitution, or gambling,²³ it raises concerns for fighting terror financing. Specifically, this provision is inadequate in stopping terror financing as it often involves an individual independently giving his personal funds (which are fully legal monies) to another person who may eventually fund terrorism.²⁴

In this type of terror financing transaction, where legal monies move between parties, § 1956(a)(1) would never become active because the money being moved is legal, or “clean,” at the time of the transaction. Thus, § 1956(a)(1) illuminates another lesson for the discussion of eliminating terrorism financing. Specifically, the U.S. government must more proactively investigate the changing of funds for an illicit intent, as the transfer of *any* monies, whether or not they are technically “clean” at that time, ought to be

²⁰ 18 U.S.C. § 1957(f).

²¹ The legislation focused intently on the transaction that created the money in the first place, rather than on the people involved in the money laundering action itself.

²² See 18 U.S.C. § 1956(a)(1) (stating that “[w]hoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity . . .” may be subject to specified penalties).

²³ Robert W. Helm & Frederick B. Lohr, *Creating, Managing and Distributing Offshore Investment Products: A Legal Perspective*, PRACTICING LAW INSTITUTE, 1412 PLI/CORP 471, 661 (2004).

²⁴ Ross Q. Panko, *Banking on the USA PATRIOT Act: An Endorsement of the Act's Use of Banks to Combat Terrorist Financing and a Response To Its Critics*, 122 BANKING L.J. 99, 103 (2005) (detailing seemingly legal means of distributing funds for terrorist projects).

considered "dirty" at the moment there is an intent to support terrorism.

The 1986 Act then specifically addresses the "transfer" of funds under § 1956(a)(2). Under 18 U.S.C. § 1956(a)(2), the act of transferring illicit money in or out of the United States is illegal. This section of the statute is a more powerful weapon than § 1956(a)(1), as § 1956(a)(2) does *not* require the showing that the monies be direct "proceeds" of an illegal action.²⁵ However, despite this more powerful weapon against money laundering, § 1956(a)(2) still illuminates lessons for future terror financing legislation because (1) § 1956(a)(2) still requires a "transfer," and there are questions of whether a "transfer" is found in *value* transfer systems where no actual money moves,²⁶ and (2) §

²⁵ 18 U.S.C. § 1956(a)(2) reads as follows:

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

²⁶ See *United States v. Dinero Express, Inc.*, 313 F.3d 803, 806 (2d Cir. 2002) (stating that "a person is sensibly considered to have engaged in a 'transfer' of money whenever he accepts money in one location and, pursuant to an overall course of conduct, causes the delivery of related money to another location"); *United States v. Gilboe*, 684 F.2d 235, 238 (2d Cir. 1982) (ruling that 18 U.S.C. §

1956(a)(2) has a provision mandating that the money cross the border of the United States.²⁷ The implication here is that § 1956(a)(2) does not become active if the funds move only within the United States, or if they move only outside of the United States.

Requiring money to cross the American border before jurisdiction is effectuated raises concerns in fighting terror financing as financiers can effectively avoid § 1956 by moving “legal” money domestically or internationally. As such, the recommendations at the conclusion of this Article mandate that the United States gains jurisdiction over any money transfer aimed at the furtherance of terrorism.

Beyond § 1956, the other principle legislative response to money laundering is 18 U.S.C. § 1957, which specifically applies to money having derived out of criminal *property*, rather than criminal *activity*.²⁸ Although in many cases the line between “criminal property” and “criminal activity” appears blurred, the § 1957 provision aims at money laundering that uses the value of property previously acquired from criminal activity. But, as that property may not have been directly derived from the criminal activity, or if the authorities cannot prove the specific activity itself, § 1957 offers an alternate method of prosecution. Thus, so long as the money (1) was derived from criminal property²⁹ or (2) was actually the “proceeds” of that criminal activity, then the government can use § 1956 or § 1957 in response. However, if the transaction is less than \$10,000, then neither statute applies. Thus, under §§ 1956 and 1957, many individuals would be able to successfully move money which is technically “clean,” in sums of \$9,999 without ever being subjected to § 1956 or § 1957. In light of the concerns raised by these legislative enactments, the recommendations discussed later will address the fact that the

2314 covers electronic transfers of funds in addition to paper transfers because the two methods are functionally indistinct—in both kinds of transactions “the beginning of the transaction is money in one account and the ending is money in another”).

²⁷ See *United States v. Kramer*, 73 F.3d 1067, 1072–73 (11th Cir. 1996) (holding that a defendant was unable to be prosecuted under § 1956(a)(2) when he only transferred funds within the United States).

²⁸ 18 U.S.C. § 1957(a) also requires the transaction to involve monies in excess of \$10,000.

²⁹ 18 U.S.C. § 1957(f)(2) defines “criminally derived property” as “any property constituting, or derived from, proceeds obtained from a criminal offense.”

narrow focus of both of these statutes left them open to easy abuses by terror financiers.

2.4. Elements of Money Laundering Offense

According to the 1986 Act, the U.S. government, in prosecuting an individual under the 1986 Money Laundering Act, must satisfy four elements of the crime: (1) knowledge, (2) the existence of proceeds derived from a specified unlawful activity, (3) the existence of a financial transaction, and (4) intent to launder money.³⁰

2.4.1. Knowledge

Although the Money Laundering Act requires some form of knowledge, the specific type of knowledge varies by specific offense. In general, the government must show knowledge that there was some sort of unlawful underlying transaction that led to the money at issue, while some circumstances require the more specific knowledge of the exact unlawful activity.³¹ Of particular importance in establishing new rules for terror financing, the question of willful blindness was left unanswered.³²

As discussed above, both §§ 1956 and 1957 require that a person prosecuted for money laundering have knowledge of the money's illicit origins, but not knowledge of the specific illegal activity that made the money illicit in the first place. For instance, § 1957 requires that the defendant "knowingly engages or attempts to engage in a monetary transaction in criminally derived property."³³ Here, knowledge can be shown without finding that the defendant actually designed or participated in the underlying activity. Many circuits, such as the Sixth and Seventh Circuits,

³⁰ 18 U.S.C. § 1956; *see also* *United States v. Brown*, 186 F.3d 661, 667-68 (5th Cir. 1999) (outlining the elements of a money laundering offense); *United States v. Sayakhom*, 186 F.3d 928, 942-43 (9th Cir. 1999) (outlining the elements of money laundering for mail fraud).

³¹ 18 U.S.C. § 1956(c)(1) (requiring that the defendant know "the property involved in the transaction represents proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7)").

³² Willful blindness is defined as "the state of mind of one who does not possess positive knowledge only because he consciously avoided it." *United States v. Jewell*, 532 F.2d 697, 702 (9th Cir. 1976).

³³ 18 U.S.C. § 1957(a).

have permitted adequate circumstantial evidence to show the requisite level of knowledge.³⁴

However, the “knowledge” requirement most important for this discussion is whether “willful blindness” can stand for knowledge.³⁵ Both §§ 1956 and 1957 require “actual knowledge,” a more stringent standard than a negligence theory of “should have known” or “reckless disregard.”³⁶ In order to reconcile this issue, courts have taken proactive steps to erode this hard-line rule of requiring “actual knowledge” by a finding that “knowledge” may be satisfied through willful blindness.³⁷

For the topic of curbing terror financing, the problem with the Money Laundering Act acting as the enforcement mechanism was that the question of “actual knowledge” and “willful blindness” was left unanswered. Willful blindness is vitally important to terror financing as an individual may send his “clean” money to a person whom he “does not know for sure will use the money for terrorism,” yet knows that the recipient has on multiple previous occasions funded terrorism. Thus, as terror financing is a more evasive system than strict money laundering, the open-ended definitions used in anti-money laundering legislation cannot double as definitions in terrorism financing legislation. In promoting new and effective methods of curbing terror financing, “willful blindness” must be statutorily held as tantamount to “actual knowledge.”

³⁴ See, e.g., *United States v. Prince*, 214 F.3d 740, 760 (6th Cir. 2000) (upholding a jury instruction which stated that the jury “may infer that the defendant had knowledge from circumstantial evidence or from evidence showing willful blindness by the defendant.”); *United States v. Smith*, 223 F.3d 554, 577 (7th Cir. 2000) (upholding conviction where “[t]he circumstantial evidence . . . could legitimately have been interpreted by the jury to show money laundering . . .”).

³⁵ See *supra* note 32.

³⁶ See *Sayakhom*, 186 F.3d at 943 n.8 (quoting *United States v. Heaps*, 29 F.3d 479, 484 (4th Cir. 1994)) (stating that a defendant “may not be convicted on just what he should have known” but that “both direct and circumstantial evidence can be used to establish knowledge and are given the same weight.”).

³⁷ *United States v. Epstein*, 426 F.3d 431, 440 (1st Cir. 2005) (quoting *United States v. Coviello*, 225 F.3d 54, 70 (1st Cir. 2000)) (“A willful blindness instruction is appropriate if (1) a defendant claims a lack of knowledge, (2) the facts suggest a conscious course of deliberate ignorance, and (3) the instruction, taken as a whole, cannot be misunderstood as mandating an inference of knowledge.”) (internal quotations and citations omitted).

2.4.2. *The Existence of Proceeds Derived From a Specified Unlawful Activity*

The second element of a money laundering offense requires showing an action that involves the "proceeds of specified unlawful activity."³⁸ The first part of this requirement is the definition of the term "proceeds." How tangential can income be and still be considered "proceeds"? Or, more importantly, how far back must the government trace money to find the money at issue to be "proceeds"? However, under § 1956, the term "proceeds" is not defined, and under § 1957, the statute merely uses "criminally derived property" to stand for "proceeds."

Thus, for the scope of the term "proceeds," there remains no agreed upon definition. As this discussion looks to the enforcement mechanisms used against money laundering to identify their strengths and weaknesses when applied to terror financing, this lack of a definition proves difficult. When the transaction changes from a money laundering campaign involving prostitution proceeds into the world of terror financing where the financial transaction supports terrorism, a statute cannot have an element of the crime that is left undefined and open for legal argument and maneuvering.

In addition, another aspect of this requirement pertinent to this Article is how far back the government must trace money to find "proceeds." Under § 1956, the government does not necessarily have to trace the dollar to a particular offense. Rather, the government is only required to establish a showing that the defendant participated in actions that are "typical of criminal activity," and that there was no other legitimate source of the funds.³⁹ However, the legal system has been reluctant to permit such circumstantial showings to stand wholly on their own, preferring such showings only to allow a jury to make an inferential finding that there could not have been a legal source of the funds.⁴⁰

³⁸ 18 U.S.C. § 1956(a)(1).

³⁹ See *United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990) (upholding conviction under 18 U.S.C. § 1956(a)(1)(B)(i), stating that while the statute does not "require that the government trace the proceeds to a particular sale" and "the government cannot rely *exclusively* on proof that a defendant . . . has no legitimate source of income," conviction is allowed where "sufficient circumstantial evidence from which a juror could infer each element of the money laundering offense beyond a reasonable doubt.").

⁴⁰ See generally *United States v. Monaco*, 194 F.3d 381, 387 (2d Cir. 1999)

Thus, the fact that the government need not actually prove the predicate offense makes this statute an advantageous weapon for government prosecutions. Section 1956 further defers to the government's case as the government is not required to trace the funds where an individual is shown to have intertwined the illicit funds with legal income.⁴¹ Thus, as noted above, in order to sustain its burden, the government need only show that a portion of the funds in question were more likely than not involved in illegal activity.⁴²

Beyond the deference to the government regarding standards of proof, the topic of commingled funds is also highly deferential to the government in enforcement as a conviction involving the commingling of funds will result in the forfeiture of *all* funds (no matter which parts are legitimate).⁴³ For the purposes of this Article, it is important that the law used to combat terror financing specifically define the government's duty in tracing money.

Further, this Section requires those "proceeds" to be of a "specified unlawful activity." The 1986 Act itself offers an expansive list of specific crimes that will satisfy this requirement.⁴⁴ While the enunciation of specific underlying crimes may be sufficient against money laundering, such restrictive language was inadequate in stopping the terrorist attacks of 9/11. Specifically,

(finding that evidence of a defendant living far above his means was admissible in a money laundering case and that "the jury was permitted to draw the inference that their prosperity was attributable to money laundering").

⁴¹ See *United States v. Ward*, 197 F.3d 1076, 1083 (11th Cir. 1999) (holding that Congress did not intend criminals to be able to escape money laundering violations by merely commingling funds).

⁴² This use of § 1956 is of particular importance for the government as a prosecution under § 1957 is not necessarily successful against commingled funds. See *United States v. Rutgard*, 116 F.3d 1270, 1291–93 (9th Cir. 1997) (holding that § 1957 requires tracing or proof that, following transfer, account balance dropped below amount of criminal proceeds deposited in commingled account because statute does not expressly cover funds "involved" in transactions).

⁴³ See *United States v. Tencer*, 107 F.3d 1120, 1134–35 (5th Cir. 1997) (concluding after examining the legislative history of 18 U.S.C. § 981 that all commingled funds in account were subject to forfeiture under § 982(a)(1), as "property involved" includes any property used to facilitate the money laundering offense).

⁴⁴ See 18 U.S.C. § 1956(c)(7) (enumerating specified unlawful activities including murder, kidnapping, robbery, fraud, extortion, narcotics distribution, and others). The Second Circuit contributed to this discussion by noting that "[s]o long as the cash is represented to have come from *any* of these activities, a defendant is guilty of the substantive offense of money laundering." *United States v. Stavroulakis*, 952 F.2d 686, 691 (2d Cir. 1992).

money laundering focuses on the "cleansing" of illegal monies, and thus creating a list of underlying offenses will permit effective prosecution. However, in terror financing there is often no illegal underlying offense, but rather a future intent to use the funds illegally. Thus, a requirement that the money have a specific origin is unnecessarily restrictive in fighting terror financing.

2.4.3. *Financial Transaction*

The third requirement for finding a money laundering offense is the existence of a "financial transaction." Contrary to common understanding, a "financial transaction" is not limited to merely banking or investment-house transactions. Rather, the statute's use of the term "financial institution" creates liability for *any* exchange of money between two parties,⁴⁵ so long as the transaction in some way impacts interstate commerce and meets one of the four intent requirements found in § 1956(a)(3).⁴⁶ Specifically, to be a violation under § 1956, the activities must impact interstate commerce or involve a "financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree."⁴⁷ This requirement is not as important for the actual classification of an action as constituting money laundering per se, rather the standard exists so as to effectuate federal jurisdiction. However, such a standard is easy to meet as courts are often lenient in finding an impact on interstate commerce, permitting such a finding with only minimal effects. Thus, in seeking principles from money laundering legislation to apply to terror financing legislation, this requirement does not raise substantial issues for terror financing.

2.4.4. *Intent*

The fourth legislative requirement for money laundering is "intent." The methods for showing intent under § 1956 are finding the (A) (i) intent to promote a specified unlawful activity, or (ii) intent to engage in a violation of the Internal Revenue Code, (B)

⁴⁵ See G. Richard Strafer, *Money Laundering: The Crime of the '90's*, 27 AM. CRIM. L. REV. 149, 193 (1989) (citing 18 U.S.C. §1956(c)(4)) ("The definition of the term ['financial transaction'] is not limited to banking or other financial institutions.").

⁴⁶ See *infra* Section 2.4.4 (explaining the four intent requirements of the Money Laundering Act).

⁴⁷ 18 U.S.C. § 1956(c)(4).

knowing that the transaction is designed in whole or in part (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, or (ii) to avoid a transaction reporting requirement under State or Federal law.⁴⁸ Alternatively, a § 1957 prosecution only requires a showing of knowledge that the financial transaction is occurring, without specifically requiring the intent to launder money, making § 1957 a more advantageous weapon for prosecution.⁴⁹

Showing "intent," much like showing knowledge, requires a fact-specific analysis. The intent requirements under the 1986 Act demand that a defendant acts knowing that the transaction, or movement of property, is designed to hide information about the proceeds of the specified criminal activity.⁵⁰ As referenced earlier, the intent for terror financing must be broad enough to include any financial act intended to further terrorism. But, throughout this discussion, the question remains: how does this area of anti-money laundering tie to terror financing and the modern day "war on terrorism"?

⁴⁸ 18 U.S.C. § 1956(a)(1)(A)–(B).

⁴⁹ 18 U.S.C. § 1957(a).

⁵⁰ The act reads:

(3) Whoever, with the intent –

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

18 U.S.C. § 1956(a)(3).

3. TERROR FINANCING AND 9/11 SPECIFICALLY

The legal and political impact of the 9/11 attacks altered not only national security and international law, but rather the attacks changed *all* law.⁵¹ The specific alteration at issue in this discussion is the legal and policy implications on financial transactions after 9/11. Historically, the use of IVTS networks has been tied to kidnapping, tax evasion, corruption, and weapons smuggling.⁵² More important to this immediate discussion, however, al-Qaeda used IVTS networks to provide funds to terrorists before 9/11.⁵³

Before engaging in the discussion of terror financing specifically, it must be highlighted that terrorism is fully dependent on money and financiers. As such, finances are the engine to the terrorist train. Efforts to change, or "win," the hearts and minds of terrorists are important, but pose limited likelihood of success on their own.⁵⁴ Rather, it is a more powerful counterterrorism weapon to cut off the lifeblood of these individuals, making their mindsets a moot point. The specific "Achilles' heel" that is the source of this discussion is the financing of terrorism through loose organizations that leave no articulable trail. In short, the financial networks at issue move value through many individuals, charities, and investment organizations without raising a single red flag.

⁵¹ See, e.g., Dan Belz, *Is International Humanitarian Law Lapsing Into Irrelevance in the War on International Terror?*, 7 THEORETICAL INQUIRIES L. 97 (2005) (discussing the changing U.S. approach to humanitarian law in the context of the war on terror); Stephen P. Marks, *Branding the "War on Terrorism": Is There a "New Paradigm" of International Law?*, 14 MICH. ST. J. INT'L L. 71 (2006) (discussing the state of international law after 9/11); Sheela Murthy & Carla O'Donoghue, *Impact of Natural Disasters on Immigration and Business*, MD. B.J., July-Aug. 2006, at 38, 38 (stating that "[a]fter the horrific attacks of September 11, 2001, the landscape of immigration law changed forever"); Stephen P. Watters & Joseph S. Lawder, *The Impact of September 11th on Tort Law and Insurance*, 29 WM. MITCHELL L. REV. 809 (2003) (detailing the drastic effects of 9/11 in the area of tort law and insurance).

⁵² See PATRICK M. JOST & HARJIT SINGH SANDHU, *THE HAWALA ALTERNATIVE REMITTANCE SYSTEM AND ITS ROLE IN MONEY LAUNDERING* 19-21 (2000), available at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/default.asp> (describing cases where *hawala* techniques have been used to launder money).

⁵³ See generally NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *THE 9/11 COMMISSION REPORT* ch. 2 (2004), available at <http://www.9-11commission.gov/report/911Report.pdf> [hereinafter 9/11 COMMISSION REPORT] (recounting the rise and growth of the al-Qaeda before 9/11).

⁵⁴ James Dao, *Trying to Win Iraqi Hearts and Minds on the Battlefield*, N.Y. TIMES, Apr. 6, 2003, at B5.

3.1. *How Terrorists Finance Their Missions*

Despite many similarities, terror financing presents a wholly different discussion from money laundering and as such, the traditional money laundering legislation is insufficient against terror financing. Money laundering, as the above discussion suggests, is the cleaning and concealment of “dirty” or “illicit” money. A governmental program that searches for illegal activities will likely find money laundering. However, the financial acts in terror financing do not necessarily involve illicit funds. In money laundering the criminality begins with the illicit earning of funds, followed by the subsequent illegal act of money laundering. In terror financing, however, the actual illegality often occurs only *after* the actual transfer, when the money is ultimately *used* for funding terrorism. Thus, the mere application of the existing money laundering rules is insufficient.

In short, the problematic nature of IVTS networks is that it is practically impossible to track the funds due to the fact that most dollars passing through an IVTS are legitimate and clean.⁵⁵ In the IVTS networks, clean money is sent through a system populated by mostly “clean” money, and the funds reach their illegal purpose when used for terrorism.

3.2. *Government Responses to Terror Financing Before and After 9/11*

3.2.1. *International Organizations*

The United States has promoted many different agenda points aimed at curbing money laundering internationally in an effort to make it less enticing for domestic individuals to use the international markets to launder money and finance illicit actions. One such effort was the creation of the Financial Action Task Force (“FATF”), the investigative body of the Organization for Economic Cooperation and Development, of the G-8 nations.⁵⁶ FATF

⁵⁵ This means that the money is not derived from illegal acts or in the furtherance of such intentions. See U.N. Dep’t of Econ. & Soc. Aff., Discussion Paper Series, *Informal Money Transfer Systems: Opportunities and Challenges for Development Finance*, U.N. Doc. ST/ESA/2002/DP/26 (Nov. 2002) (prepared by Leonides Buencamino & Sergei Gorbunov) (stating that between \$100 and \$300 billion pass through the IVTS each year).

⁵⁶ See *The Administration’s National Money Laundering Strategy for 2002: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 38–47 (2002) (statement of Kenneth W. Dam, Deputy Secretary, U.S. Dep’t of the

promotes U.S. interests by requiring nations to institute their own domestic legislation in compliance with established regulations.⁵⁷ Beyond tacitly requiring countries to create their own domestic laws aimed at money laundering, FATF puts forth "special recommendations" that specifically delineate legislative actions nations are urged to follow.⁵⁸

Special Recommendation VI addresses IVTS networks. Specifically, it states that countries must "license[] or register[]" all informal value transfer businesses and subject them to the same FATF requirements as banks and financial houses.⁵⁹ This "recommendation" has significant implications, as the failure of a nation to comply can result in the G-8 nations adding the noncompliant nation to a blacklist of "Non-Cooperating Countries and Territories" until that nation agrees to comply with such recommendations.⁶⁰

The United States has stepped further into the international realm by specifically identifying a "hawala triangle" existing between Dubai, Pakistan, and India, as they are the areas most heavily invested in *hawalas*.⁶¹ The United States became particularly interested in this area given that Mohamed Atta and Marwan Al Shehhi, two of the 9/11 hijackers, received more than \$120,000 from Dubai in 2000.⁶²

Treasury) (discussing the recommendations adopted by the FATF in an effort to safeguard financial systems from terrorist abuse).

⁵⁷ G. Scott Dowling, *Fatal Broadside: The Demise of Caribbean Offshore Financial Confidentiality Post USA PATRIOT Act*, 17 TRANSNAT'L LAW. 259, 283 (2004).

⁵⁸ In order to fully understand terrorism, and this discussion in particular, it is necessary that one recognize the fact that all terrorism is based on money, and financiers are the engine of the terrorist train. Specifically, the FATF's goal is "to secure the adoption by all financial centres of international standards to prevent, detect, and punish money laundering, and thereby effectively co-operate internationally in the global fight against money laundering." FIN. ACTION TASK FORCE, ANNUAL REVIEW OF NON-COOPERATIVE COUNTRIES AND TERRITORIES 2005-2006, at 2 (2006), <http://www.fatf-gafi.org/dataoecd/0/0/37029619.pdf>.

⁵⁹ FIN. ACTION TASK FORCE ON MONEY LAUNDERING, SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING 2 (2004), <http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf>.

⁶⁰ See FIN. ACTION TASK FORCE ON MONEY LAUNDERING, THE FORTY RECOMMENDATIONS 7 (2003), <http://www.fatf-gafi.org/dataoecd/7/40/34849567.pdf> (authorizing countries to "apply appropriate countermeasures" to countries that insufficiently comply with the FATF Recommendations).

⁶¹ Timothy L. O'Brien, U.S. *Focusing on Dubai as a Terrorist Financial Center*, N.Y. TIMES, Oct. 5, 2003, at 13.

⁶² Judy Pasternak & Stephen Braun, *Emirates Looked Other Way While Al Qaeda Funds Flowed*, L.A. TIMES, Jan. 20, 2002, at A1.

Responding to the U.S. scrutiny of the "hawala triangle," the United Arab Emirates took measures in the international community by participating in a 2002 financial conference with more than 300 international delegates.⁶³ At this conference the Abu Dhabi Declaration on Hawala was adopted.⁶⁴ The goal of this declaration was to articulate and recognize the positive aspects of *hawalas* as they "provide[] a fast and cost effective method for worldwide remittance of money," while also calling for their effective, but not overly restrictive, regulation.⁶⁵ More important, though, was the declaration that the "international community should remain seized with the issue and should continue to work individually and collectively to regulate the Hawala system for legitimate commerce and to prevent its exploitation or misuse."⁶⁶

3.2.2. Domestic Legislative and Operational Responses

In order to further ascertain the effective and ineffective ways of targeting terror financing, the discussion of laws on the books before the 9/11 attacks must move beyond the money-laundering-specific legislation to a discussion of other efforts aimed at regulating the illegal use of the IVTS. Specifically, the Bank Secrecy Act of 1970 ("BSA") was the initial legislation requiring record-keeping and reporting requirements for banks.⁶⁷ Then, Congress specifically addressed IVTS networks through the aforementioned Money Laundering Control Act of 1986, which includes the more often recognized money laundering rules.⁶⁸ Third, in attempting to coalesce these standards with counterterrorism efforts, the United States Congress legislated the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("PATRIOT Act").⁶⁹ The PATRIOT Act is specifically applicable to

⁶³ Rachana Pathak, *The Obstacles to Regulating the Hawala: A Cultural Norm or a Terrorist Hotbed?*, 27 FORDHAM INT'L L.J. 2007, 2037 (2004).

⁶⁴ See FIRST INT'L CONFERENCE ON HAWALA, ABU DHABI DECLARATION ON HAWALA (2002), available at <http://www.treas.gov/offices/enforcement/programs/Hawala-conf.pdf>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (codified as amended in scattered sections of 12, 18, and 31 U.S.C.).

⁶⁸ Pub. L. No. 99-570, 100 Stat. 3207 (codified as amended at 18 U.S.C. § 981 (2000)).

⁶⁹ Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections

this discussion as it makes the failure to comply with the BSA's reporting requirement a *criminal*, rather than merely a civil, offense.

Beyond these legislative responses, the U.S. Department of the Treasury established an enforcement division called the Financial Crimes Enforcement Network ("FinCEN")⁷⁰ which works with various U.S. law enforcement agencies in an effort to ensure compliance with the above legislation.⁷¹ While FinCEN focuses on domestic enforcement, the international realm is covered by the Office of Foreign Assets Control, which focuses on disrupting and freezing illicit funds internationally.⁷² The enforcement "teeth" beyond these legislative regimes and entities exist in the Department of the Treasury's inter-agency enforcement group, "Operation Green Quest,"⁷³ which is a "multiagency task force led by the U.S. Customs Service that also includes the Internal Revenue Service, the Secret Service, Treasury's Office of Foreign Asset Control, and FinCEN."⁷⁴ This multiagency task force

of 8, 18, 42, and 50 U.S.C.).

⁷⁰ According to the website for the Financial Crimes Enforcement Network of the U.S. Department of the Treasury, the mission of this entity is to "safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity." Financial Crimes Enforcement Network, U.S. Dep't of the Treas., About FinCEN Mission, http://www.fincen.gov/af_mission.html (last visited Oct. 19, 2007).

⁷¹ *Id.*

⁷² According to the website for the Office of Foreign Assets Control of the U.S. Department of the Treasury, the mission of this entity is to

administer[] and enforce[] economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under US jurisdiction.

U.S. Treasury - Office of Foreign Assets Control, <http://www.treas.gov/offices/enforcement/ofac/> (last visited Oct. 18, 2007).

⁷³ This entity is comprised of members of the United States Secret Service, United States Customs, the FBI, the CIA, and the Department of Justice. See Operation Green Quest Overview, http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/legacy/2002/22002/02262002.xml (last visited Oct. 17, 2007) (listing participating governmental organizations).

⁷⁴ Joseph Wheatley, Comment, *Ancient Banking, Modern Crimes: How Hawala Secretly Transfers the Finances of Criminals and Thwarts Existing Laws*, 26 U. PA. J. INT'L ECON. L. 347, 361-62 (2005).

operates to "augment existing counter-terrorist efforts by bringing the full scope of the government's financial expertise to bear against systems, individuals, and organizations that serve as sources of terrorist funding."⁷⁵

Beyond the aforementioned governmental responses, there have also been significant statutory efforts to curb terror financing. However, although the federal government has pursued substantial efforts regarding terror financing, they simply need to go further. The most direct and effective measures on point are the material support statutes.⁷⁶ Despite the value they serve in prohibiting material support, they are insufficient because of two shortcomings.

First, sections 2339A and 2339B both make it unlawful to knowingly or intentionally provide resources to terrorists or terror organizations.⁷⁷ However, as discussed throughout this Article, the "knowledge" requirement leaves an impermissible door open whereby an individual insulates himself from culpability by acting in a "willfully ignorant" manner. Thus, to cure this deficiency, the statute must apply to providing *any* material support.

Second, these statutes necessitate the transfer specifically to a terror organization. However, such an element is extraordinarily difficult to show. The statute must be expanded to outlaw material support while clearly delineating specifically what is required for showing the connection of support.

In short, it is essential that, on the one hand, the rule of law not be excessive or extreme; but on the other hand, the rule of law cannot allow for such loopholes where one may claim innocence based on either willful ignorance or a difficulty in showing the intricate linkage of funds to a specific, amorphous terrorist entity.

⁷⁵ Press Release, U.S. Dep't of the Treasury, Office of Public Affairs, Deputy Secretary Dam Remarks at the Launch of Operation Green Quest (Oct. 25, 2001), available at <http://www.ustreas.gov/press/releases/po727.htm>.

⁷⁶ See 18 U.S.C. § 2339A (Supp. IV 2004) (criminalizing the concealment or protection of terrorists); 18 U.S.C. § 2339B (Supp. IV 2004) (allowing prosecution of such crimes in any federal judicial district in which the underlying offense was committed).

⁷⁷ See 18 U.S.C. § 2339A(a) ("Whoever, within the United States, provides material support or resources . . . knowing or intending that they are to be used in preparation for . . . [a terrorist act] . . . shall be fined under this title. . . ."); 18 U.S.C. § 2339B(a)(1) ("Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support . . . to a foreign terrorist organization . . . shall be fined under this title").

3.3. Government Action Towards Hawalas

3.3.1. How Hawalas Work

Hawalas are an often-discussed and criticized source of terror financing.⁷⁸ The IVTS system is popular because of its low fees and lack of formalities. However, the lack of formalities raises the danger that they will be used for illicit purposes, since there is oftentimes not a paper-trail of a transaction, the money does not cross the American border, and the money is legal, or "clean," at the time of the transfer.⁷⁹ This is dangerous considering, for instance, that the primary focus of legislative efforts to curb money laundering and terror financing before 9/11 was on (1) the illegal nature of the money in question and (2) the need for such money to cross the border. Neither of these two triggers is "activated" in the *hawala* example below. As a primary method of IVTS, the *hawala* is used around the world to transfer money or assets without either a paper trail or the high fees charged by banks. In order to understand how an IVTS system is used to finance terrorism, it is imperative to see how such a transaction occurs and to see the complete lack of formalities or paper trails. The following illustration will describe how such value transfer systems work:

An American citizen ("AC") wants to send \$1,000 to his friend ("F") in Turkey. AC contacts a *hawaladar* ("H1") in the United States to effectuate this transfer.⁸⁰ H1 consents to make this value transfer from AC to F for a 2% fee, an amount less than charged at banks or wire transfer businesses. AC then pays H1 \$1,000 and H1 gives AC a password. After this, AC contacts F to give him the password and tells F whom to contact in Turkey to receive the money. At the same time, H1 contacts his business partner, a *hawaladar* in Turkey ("H2"). H1 informs H2 of the transaction and H2 gives the same password H1 gave AC. When F meets H2 and gives H2 the password, F receives the local equivalent of \$1,000 minus the 2% commission. At no point did an actual dollar move between countries in this transaction.

⁷⁸ However, *hawalas* are only one source of such fund transfers. Other regional names, like *fei ch'ien*, *phoe kuan*, and chop shop are used.

⁷⁹ See Adil Anwar Daudi, *The Invisible Bank: Regulating the Hawala System in India, Pakistan and the United Arab Emirates*, 15 IND. INT'L & COMP. L. REV. 619, 632 (2005) (describing *hawalas'* potential for illegal activity).

⁸⁰ In all probability, H1 operates this money transfer business on the side of his main business, the operation of a convenience store, for instance.

However, this is only half of the transaction. While AC and F have completed their transaction, H1 received \$1,000 and H2 paid the local equivalent of \$1,000 minus the commission fee. Thus, there is a debt of roughly \$1,000 between *hawaladars*. One way to repay such debts is through reverse transactions where a person in Turkey wishes to send \$1,000 to a person in the United States and opts to use H2 and H1 for such a transaction. However, another commonly used method between *hawaladars* is through legitimate business. When the *hawaladars* are involved in importing and exporting, for example, the \$1,000 debt can be repaid by adjusting an invoice to overstate the value of the legitimate goods by \$1,000. Or, alternatively, H2 may owe \$1,000 to another *hawaladar* in America, and in order to satisfy the debt incurred in the transaction described above, H1 may pay H2's debt to the third party.

This brief picture of the *hawala* system shows how the achievement of a simple goal⁸¹ requires a complicated set of transactions. This picture also highlights how *hawalas* work without any physical transfer of money between primary parties and is based fully on trust and obligations rather than paperwork, making regulation and tracking very difficult.

The nature of the *hawala* system, and its potential for abuse, require law enforcement to address regulation of the system. Although it is nearly impossible to gauge the size of *hawalas* worldwide, it is estimated that *hawalas* involve billions of dollars traveling around the world through these informal, unregistered networks.⁸²

⁸¹ The goal is transferring money without subjecting the transactions to banking or regulatory fees.

⁸² See generally Dilip Ratha, *Workers' Remittances: An Important and Stable Source of External Development Finance*, in GLOBAL DEVELOPMENT FINANCE, STRIVING FOR STABILITY IN DEVELOPMENT FINANCE 157 (2003), reprinted in REMITTANCES DEVELOPMENT IMPACT AND FUTURE PROSPECTS 19 (Samuel Munzele Maimbo & Dilip Ratha eds., 2005) (examining the role of workers' remittances as a source of external financing for developing countries); *Hawala and Underground Terrorist Financing Mechanisms: Hearing Before the Subcomm. on Int'l Trade and Fin. of the S. Comm. On Banking, Housing, and Urban Affairs*, 107th Cong. 22 (2001) (statement of Rahim Bariek, Bariek Money Transfer) (discussing the transactions within a specific *hawala*); MOHAMMED EL QORCHI ET AL., INT'L MONETARY FUND, OCCASIONAL PAPER NO. 222, INFORMAL FUNDS TRANSFER SYSTEMS: AN ANALYSIS OF THE INFORMAL HAWALA SYSTEM (2003) (discussing the operation, benefits, and risks of the *hawala* system and the challenges of regulating these complex, informal fund transfer systems).

3.3.2. General Government Reactions to IVTS Networks

Under the aforementioned legislative framework of money laundering statutes and the PATRIOT Act,⁸³ the U.S. government aims to regulate illegal money transfers through IVTS. Specifically, the PATRIOT Act acts as a way to patch many of the previously discussed holes through which terror financiers have slipped. Under the PATRIOT Act, *all* individuals or entities that transfer monies, no matter how formal or informal, must comply with the aforementioned money laundering regulations.⁸⁴ Of the most importance to this discussion, the PATRIOT Act redefines "money transmitting business" to include any person "who engages as a business in the transmission of funds, including any person who engages as a business through an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system."⁸⁵ The importance of this definitional change lies in that the strict reporting rules previously applicable only to banks now apply to these informal transfer entities.

Under the BSA, the term of art used for these non-bank transfer entities is "money-transmitters" or "money service businesses" (MSBs).⁸⁶ The PATRIOT Act applies the financial rules to IVTS networks by making it illegal to run an MSB (a) without the applicable state license, (b) outside of FinCEN's requirements for registration, or (c) with knowledge that the money had an illegal origin.⁸⁷ The origins of the PATRIOT Act defined "unlicensed money transmitting business" as any "money transmitting business which affects interstate or foreign commerce in any manner or degree and (A) is operated without an appropriate money transmitting license . . . (B) fails to comply with the money transmitting business registration requirements . . . or (C) otherwise involves the transportation or transmission of funds that

⁸³ See Section 3.3.2, *infra*.

⁸⁴ Shawn Turner, *U.S. Anti-Money Laundering Regulations: An Economic Approach to Cyberlaundering*, 54 CASE W. RES. L. REV. 1389, 1411 (2004) ("[T]he Patriot Act expands the BSA's scope to include informal value transfer systems. . . . In particular, section 359(a) of the Patriot Act brings 'informal money transfer systems' under the BSA's reporting requirements.").

⁸⁵ 31 U.S.C. § 5330(d)(1)(A) (Supp. IV 2004).

⁸⁶ U.S. DEP'T OF TREASURY, *supra* note 13, at 7.

⁸⁷ 18 U.S.C.A. § 1960(b)(1)(A)-(C) (West 2006).

are . . . intended to be used to promote or support unlawful activity.”⁸⁸

The PATRIOT Act strengthened the financial enforcement system by requiring every MSB to register like a corporation, providing contact names and numbers which must include an owner's name, his contact address, the MSB's financial account numbers, and a number given it by the federal government.⁸⁹ This is important to the discussion at hand because, as noted earlier, the lack of formalities in IVTS transfers is the primary reason for the ease with which they are abused. Imposing reporting requirements similar to those applied to banks was an attempt to eliminate loopholes.

Like a bank, an MSB must verify the identity of any customer or beneficiary receiving a money transfer of more than \$3,000.⁹⁰ Further, MSBs must also comply with the Suspicious Activity Reporting Requirements.⁹¹

3.3.3. *How Are These Statutes To Be Applied?*

Legislative responses to terror financing and money laundering, as discussed earlier, are often only applied to actions occurring within the United States. However, application of such efforts to curb terrorism's financing must have international application.

In *United States v. Davis*,⁹² the Ninth Circuit outlined a three stage inquiry for when a statute should have international application: (a) whether Congress had the authority to establish extraterritorial effect to the statute, (b) whether Congress

⁸⁸ *Id.*

⁸⁹ See 31 U.S.C. § 5330 (2000) (discussing registration requirement for money transmitting businesses).

⁹⁰ Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions, 60 Fed. Reg. 220, 229–31 (1995) (changing the reporting requirements for transfers of \$3,000 or more).

⁹¹ 31 C.F.R. § 103.20(a)(1) (“Every money services business . . . shall file with the Treasury Department . . . a report of any suspicious transaction relevant to a possible violation of law or regulation.”).

⁹² 905 F.2d 245 (9th Cir. 1990) (affirming the California Court of Appeal's decision finding no due process violation in the prosecution of the vessel captain under the Maritime Drug Law Enforcement Act when his foreign registry vessel was seized 100 miles off the coast of the United States and holding that the Fourth Amendment protections did not extend to the search of foreign registry vessels at sea).

specifically intended the statute to apply extraterritorially, and (c) whether the Due Process Clause permits the United States to punish such conduct as is outlawed by the statute in question.⁹³ Applying this three-part test, the Ninth Circuit articulated narrowing factors, the most important of which was the requirement that "there be a sufficient nexus between the defendant and the United States so that such application would not be arbitrary" ⁹⁴

Applying the *Davis* test to the previously discussed legislative framework, the statutes prohibiting and prosecuting money laundering meet the *Davis* three-part test. Specifically, under the Foreign Commerce Clause, the United States government may regulate business activities in the United States that involve other nations,⁹⁵ the statutes can be read under a plain meaning analysis to see that Congress intended extraterritorial application,⁹⁶ and the Due Process Clause has never been held to prohibit the United States government from prosecuting money laundering or terror financing. Further, any attempts to promote terrorism provide a sufficient nexus to the United States, satisfying the above tests.

This principle is not limited to the Ninth Circuit, as the Eleventh Circuit has added its input in the case of *United States v. Tarkoff*.⁹⁷ In *Tarkoff*, a transaction between citizens of Israel and Curacao was considered within the jurisdiction of § 1956 as the individuals had traveled throughout Israel, used international phone calls to communicate, and moved funds through an international bank.⁹⁸ Thus, each of these holdings shows that the "nexus to the U.S." requirement is not a strenuous one to satisfy, allowing the U.S. Congress to enact legislation targeting terror financing around the world.

⁹³ *Id.* at 248–49.

⁹⁴ *Id.* (noting that such test would be met "[w]here an attempted transaction is aimed at causing criminal acts within the United States" (citing *United States v. Peterson*, 812 F.2d 486, 493 (9th Cir. 1987)).

⁹⁵ U.S. CONST. art. I, § 8 ("regulate Commerce with foreign Nations . . .").

⁹⁶ See 18 U.S.C. §§ 1956–57 (2000) (articulating jurisdiction over foreign institutions).

⁹⁷ 242 F.3d 991 (11th Cir. 2001) (upholding money laundering and conspiracy conviction based on transactions occurring wholly outside United States).

⁹⁸ *Id.* at 994–95.

3.3.4. Case Studies of PATRIOT Act Prosecution

The first PATRIOT Act case study of government action against an MSB involved Mohamed Hussein.⁹⁹ Hussein ran an MSB without having complied with the licensing requirements and was sentenced to eighteen months in jail.¹⁰⁰ This case highlights an important precedent because Hussein argued a “lack of knowledge” defense, which the court held to not be viable.¹⁰¹ This holding is important to the fight against terrorism financing, as denying an argument of “lack of knowledge” will preclude an investor from being “willfully blind” about the destination of his funds.

In a second case, al-Barakaat was subject to a PATRIOT Act investigation. Al-Barakaat was a financial entity based in Somalia operating throughout Europe and North America. Further, al-Barakaat was the largest employer in all of Somalia.¹⁰² In addition to being known as the largest employer in Somalia, al-Barakaat was also believed to have funneled a maximum of \$20 million to al-Qaeda every year.¹⁰³ Acting on such information, as well as a belief that al-Barakaat’s founder was Ahmed Nur Ali Jimale, a close associate of al-Qaeda, federal agents of the United States carried out raids against four different al-Barakaat store-front operations within the United States.¹⁰⁴

⁹⁹ See Alicia L. Rause, *USA Patriot Act: Anti-Money Laundering and Terrorist Financing Legislation in the U.S. and Europe Since September 11th*, 11 U. MIAMI INT’L & COMP. L. REV. 173, 176-77 (2003) (discussing cases that have been or are currently being prosecuted under U.S. anti-money laundering laws, including the PATRIOT Act).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See JOHN ROTH ET AL., NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., STAFF MONOGRAPH ON TERRORIST FINANCING 67 (2004), available at http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf (“[A]l-Barakaat at the time of 9/11 had more than 180 offices in 40 countries At the time of the terrorist attacks, al-Barakaat was considered the largest money remittance system operating in Somalia . . .”).

¹⁰³ See *The Financial War on Terrorism and the Administration’s Implementation of Title III of the USA PATRIOT Act: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs*, 107th Cong. 16 (2002) (statement of Kenneth W. Dam, Deputy Secretary, U.S. Department of the Treasury) (discussing how shutting down al-Barakaat disrupted larger flows of terrorist funding).

¹⁰⁴ See Press Release, Executive Office of the President, Shutting Down the Terrorist Financial Network, (Nov. 7, 2001), available at <http://www.whitehouse.gov/news/releases/2001/11/20011107-6.htm> (articulating Jimale’s link to al-Qaeda); Press Release, Executive Office of the President, President Announces

These raids on one of the major *hawala* networks frightened many participants throughout the terror financing community, encouraging numerous *hawalas* to comply with the registration requirements. However, the government's case was soon weakened as it became evident that the action was based on a tenuous connection to terrorism.¹⁰⁵ Thus, the investigation served only to freeze people's primary source of income.¹⁰⁶ Specifically, al-Barakaat operated very similar to a bank, and thus held individuals' assets.¹⁰⁷ When the U.S. government seized those funds, many individuals were left entirely without access to their livelihoods. Due to the concerns raised by the freezing of assets, the international community protested the "strong-armed" tactic used by the United States.¹⁰⁸ This case is directly applicable, though, to the discussions of this Article where the question remains how the government can best shut down those who fund terrorism.

While the al-Barakaat case is an example of the U.S. government proactively stepping in to shut down an entity believed to support terrorism, it also illuminates many of the inherent problems. For instance, the government's raid on al-Barakaat, one of the largest *hawala* networks, occurred only in four

Crackdown on Terrorist Financial Network, (Nov. 7, 2001), available at <http://www.whitehouse.gov/news/releases/2001/11/20011107-4.html> (announcing a crackdown on the funding of terrorist networks). These raids led to the U.S. seizure of \$1.9 million in assets.

¹⁰⁵ Mohamed Nimer, *Muslims in America After 9-11*, 7 J. ISLAMIC L. & CULTURE 1, 29 (2002).

¹⁰⁶ See Ann C. Richard, *The Money Trail: Europe Can Do More to Shut Down Terrorist Funds*, INT'L HERALD TRIB., Mar. 19, 2004, at 6 (discussing the need to combat "loopholes" such as the use of charities which make the freezing of assets insufficient to adequately stop terror financing); *UAE Urges World to Isolate Hawala System Abusers*, UAE INTERACT, May 16, 2002, http://uaeinteract.com/docs/UAE_urges_world_to_isolate_Hawala_system_abusers_/4177.htm (last visited Oct. 4, 2007) (stating that *hawala* systems must isolate those who use *hawalas* to fund terror); Tim Golden, *5 Months After Sanctions Against Somali Company, Scant Proof of Qaeda Tie*, N.Y. TIMES, Apr. 13, 2002, at A10 (stating that connections between al-Barakaat and terrorist networks were "tenuous").

¹⁰⁷ See *id.* (discussing how the freezing of assets prevented individuals' access to their funds and deposits).

¹⁰⁸ See Marc Kaufman, *Somalis Said to Feel Impact of U.S. Freeze of al-Barakaat*, WASH. POST, Nov. 30, 2001, at A30 ("The Bush administration's decision this month to freeze the funds of Somalia's al-Barakaat financial system because of alleged links to al Qaeda terrorists has had a devastating effect on the country's fragile economy, top U.N. officials and Somalia experts say.").

U.S. states,¹⁰⁹ presumably permitting the organization to continue its full operations elsewhere in the world. Further, the fractious nature of *hawalas* shows how mere financial raids and seizures struggle to effectively attain the ultimate goal of curbing terror financing. If one entity is shut down, there will be a new entity on the next block by the end of the week.

In 2002, Operation Green Quest agents arrested Mohamed Albanna, a Yemeni-American, on charges of operating a *hawala* without the requisite licensing.¹¹⁰ The federal government alleged that Albanna had transferred over \$3 million into Yemen since November 2001.¹¹¹ Not only did Albanna fail to comply with the aforementioned reporting requirement for a transfer of more than \$3,000; he also neglected to register his business with either the state of New York or the federal government.¹¹²

Similar to al-Barakaat, post-arrest evidence showed that the actual ties to terrorism were more tenuous than originally believed by prosecutors, who subsequently conceded that the money in question was not actually used to fund terrorism.¹¹³ Rather, many of those who participated in Albanna's business argue that they were simply following the religious tradition of their heritage by sending money to family back home.¹¹⁴

The final PATRIOT Act case study broadens the terror financing question beyond just *hawalas*. An investigation into the Islamic Saudi Academy, located in northern Virginia, highlights the fact that questions of terror financing are far broader than just *hawalas*, but rather apply anywhere that funds further a terrorist

¹⁰⁹ Bruce Zagaris, *The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes*, 34 LAW & POL'Y INT'L BUS. 45, 68 (2002).

¹¹⁰ See Marc Santora, *A Civic Leader is Charged in Money Transfers*, N.Y. TIMES, Dec. 18, 2002, at A16 (discussing Albanna's indictment).

¹¹¹ See Dan Herbeck, *Albanna Arraigned for Mailing Cash to Yemen*, BUFFALO NEWS, Jan. 13, 2004, at B3 (discussing charges against Albanna).

¹¹² See Michael Beebe & Sandra Tan, *Yemeni Connection: Arrests Extend to Michigan in Federal Probe of Money Transfers*, BUFFALO NEWS, Dec. 19, 2002, at B1 (advancing the proposition that no *hawalas* were registered in the State of New York).

¹¹³ See Herbeck, *supra* note 111, at B3 (quoting U.S. Attorney Michael A. Battle as saying, "We have never made any linkage between Mr. Albanna and terrorism. We have charged him with running an unlicensed business for sending money.").

¹¹⁴ See *id.* (quoting the defense attorney for one of Albanna's codefendants as saying, "A lot of people in Yemen depend on money that is sent to them from family members in America.").

agenda.¹¹⁵ This school, although admittedly less extreme than many *madrasas* in Muslim states,¹¹⁶ teaches grammar school and high school students not only regular academics, but also teaches them that a "Day of Judgment" awaits the conversion of the world to Islam and the elimination of the Jewish people.¹¹⁷

The Academy came under particular scrutiny when a recent valedictorian was charged and convicted for participating in plans to assassinate President Bush.¹¹⁸ Further, a member of the school's financial board was arrested while videotaping the Chesapeake Bay Bridge.¹¹⁹ Thus, the U.S. government has begun an investigation into the origins of the school's funding, as well as an inquiry into the specific role played by the Saudi government.¹²⁰ The question of the Saudi influence was given some attention in the 9/11 Commission Report, where it was noted that the Saudi government spends funds to disseminate *Wahhabi* beliefs to mosques and educational institutions around the world.¹²¹

These case studies highlight the tenuous balance required in the efforts to curb terror financing. First, the above examples show that after 9/11 the U.S. government has been willing to act in a broad and forceful manner towards suspected financiers of terrorism. Second, though, these actions have raised great concern among the people "on the ground" who use IVTS networks for completely legitimate purposes. Thus, the recommendations at the

¹¹⁵ Letter from Charles E. Schumer, U.S. Senator, to Alberto Gonzales, Att'y Gen. (Feb. 22, 2005), *available at* <http://schumer.senate.gov/SchumerWebsite/pressroom/Letters/2005/Gonzalez%20Ltr%2002.22.05.pdf> [hereinafter *Schumer Letter*] (detailing the involvement of alumni of the Islamic Saudi Academy in terrorist activities).

¹¹⁶ Rather, these schools operate much like other religious schools within America.

¹¹⁷ See Valerie Strauss & Emily Wax, *Where Two Worlds Collide: Muslim Schools Face Tension of Islamic*, U.S. Views, WASH. POST, Feb. 25, 2002, at A01 (discussing the tensions that mount in Muslim schools in the United States).

¹¹⁸ See Jerry Markon & Dana Priest, *Terrorist Plot to Kill Bush Alleged*, WASH. POST, Feb. 23, 2005, at A1 (explaining the assassination plot).

¹¹⁹ Press Release, Sen. Charles E. Schumer, *Schumer: Is Saudi Academy in Virginia Another Madrasa?* (Feb. 23, 2005), *available at* http://schumer.senate.gov/SchumerWebsite/pressroom/press_releases/2005/PR41490.VAIslamicSchool.022305.html.

¹²⁰ See *Schumer Letter*, *supra* note 115 (urging an investigation into the school's funding).

¹²¹ See 9/11 COMMISSION REPORT, *supra* note 53, at 372 (stating that some *Wahhabi* schools and organizations have been "exploited by extremists to further their goal of violent jihad against non-Muslims.").

conclusion of this discussion must take into account the delicate balance between these often contradictory interests.

3.3.5. *What Do These Case Studies Show?*

As these case studies highlight the delicate balancing needed between governmental interests in stopping terror financing and the “on the ground” interest in using the IVTS networks for legitimate purposes as is, the paramount issue for this discussion will be the determination of an appropriate balance between interests of national security and legal money transfer systems engaging in humanitarian work. As an example of this balancing, in the above-discussed case studies, there were many complaints that violations of a registration requirement cannot equal or necessitate the freezing of assets.

However, weighing towards the government’s interest, the registration requirements are a minimal and simple way to attempt this delicate balance in light of other possible remedies. While *hawalas* often do serve a legitimate purpose, they are also “ripe for the picking” by unscrupulous investors. As such, the government merely requires the registration of these businesses, rather than finding them per se illegal.

In essence, these cases demonstrate two things. On the one hand, they show governmental power, the use of which is central to the discussions and recommendations of this Article. On the other hand, these case studies highlight the delicate balance required by the government in regulating financial transactions related to *hawalas*. The prosecution of these entities, as well as the freezing of assets, should send shockwaves throughout the *hawala* community, coercing compliance with fairly meager reporting requirements.

However, such governmental actions may also serve to embolden the unscrupulous investors and *hawaladars*. Clearly, the government could avoid the problems highlighted in the al-Barakaat example by employing a team of analysts to fully and thoroughly analyze the entity in question, but such deference to the entity would lead to multi-year government investigations, a reality that is not practical in the world of counterterrorism. Not only is the U.S. government engaged in a new and rapidly changing struggle against terrorism that precludes the allotment of such large amounts of time, but the *hawalas* also do not lend themselves to such inquiries due to a complete lack of records.

The final lesson from these case studies is the recurring theme of a need for international cooperation.¹²² If money laundering and terror financing are treated merely as domestic crimes, the goal of eliminating terror financing cannot be achieved. Rather, the government must proactively establish and exercise universal jurisdiction over this international crime.¹²³

The fact that terror financing takes place in more calm settings than warfare makes it no less of a threat than an individual with a bomb. Conversely, financiers should receive *greater* attention than the foot soldiers, as there are a thousand people willing to wear a bomb. Killing one bomber only makes room for the next person to pick up the bomb. However, the financiers are few and far between. Thus, taking these individuals out of circulation creates a larger dent in the furtherance of the terrorist goals. As the "zone of combat" in the "war on terror" is continually expanding beyond traditional notions of warfare,¹²⁴ terror financing needs to be included as part and parcel of this expanding "zone of combat."

4. FOREIGN TREATMENT OF TERROR FINANCING

As has been articulated above, domestic efforts to curb terror financing must simultaneously take an international perspective. Thus, it is important not only to discuss the specific international treatment of terror financing, as discussed earlier, but also to discuss the current steps being taken in foreign jurisdictions—such as Israel, Iraq, and England—to curb terror financing.

4.1. Israel

Any discussion of the world's interaction with terrorism must begin with Israel, as there is no better laboratory for

¹²² As evidenced by the fact that a purely domestic raid of four store-front al-Barakaat operations cannot serve to effectively curb al-Barakaat's international funding of terrorism. See Kaufman, *supra* note 108 (reviewing major U.S. government initiatives to combat transnational financing of terrorism); Zagaris, *supra* note 109 (discussing the impact on Somalia of the U.S. freeze of al-Barakaat).

¹²³ The United States currently asserts jurisdiction over extraterritorial abductions regardless of where they occur in the world under universal jurisdiction. See Gregory S. McNeal & Brian J. Field, *Snatch-and-Grab Ops: Justifying Extraterritorial Abduction*, 16 TRANSNAT'L L. & CONTEMP. PROBS. 491, 522 (2007) (discussing extraterritorial abductions and the need for an international involvement in setting appropriate standards of protocol).

¹²⁴ Where the "zone of combat" is beyond merely the actual places of fighting, to include anywhere that supporters of terrorism act.

counterterrorism measures and efforts. A starting point for discussing Israel's response to terror financing is the Prohibition of Financing Terrorism Law of 2004 ("PFTL").¹²⁵ The PFTL was passed in direct response to the United Nations' International Convention for the Suppression of Financing Terrorism, a resolution specifically defining terror financing as an offense and encouraging nations to enact legislative measures intended to identify, locate, and seize funds intended for terror financing.¹²⁶

Although this international convention was passed in 1999, well before the 9/11 attacks, it was not until after the attacks that the United Nations Security Council enacted Resolution 1373, specifically calling on states to work jointly against terror financing by complying with the Convention.¹²⁷ Specifically, Resolution 1373 created an international obligation for nations to criminalize activities related to terror financing, criminalize possessing assets on the behalf of others connected to terrorism, and allow for the freezing of assets known to be tied to terrorism.¹²⁸ Further, Resolution 1373 created the Counterterrorism Committee, a body assigned the task of watching over the implementation of the Resolution in all states.¹²⁹ The general goal of this Resolution, and of the committee charged with its oversight, is to broaden the world's efforts to combat terrorism by requiring all states to participate in preventing terror financing.¹³⁰

¹²⁵ The Prohibition of Financing Terrorism Law, 2005, S.H. 1973, *translated in* <http://www.justice.gov.il/NR/rdonlyres/4FE9E898-1264-4561-B7AA-0957F6DEA67A/0/ProhibitionTerroristFinancing.doc>.

¹²⁶ International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 229 (adopting measures for the prevention of the financing of terrorism and its suppression through the prosecution and punishment of its perpetrators).

¹²⁷ See S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) (requesting that states prevent and suppress the financing of terrorist acts through criminalization of the willful provision or collection of funds that will be involved in terrorist acts and freezing of assets of people who commit, participate, facilitate, or attempt acts of terrorism).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ The White House described 1373 as articulating "new, strict standards for all states to meet in the global war against terrorism." THE WHITE HOUSE, NATIONAL STRATEGY FOR COMBATING TERRORISM 18 (Feb. 2003), *available at* http://www.whitehouse.gov/news/releases/2003/02/counter_terrorism/counter_terrorism_strategy.pdf (providing an overview of the terrorist threat today and the national security goals and objectives of the U.S. government).

The Israeli government's passing of the PFTL highlights the international response needed in combating terror financing. Terror financing is not an offense which can be handled solely through existing domestic frameworks. Rather, Israel realized the need to subjugate domestic law to an international standard. Thus, the PFTL provides Israeli authorities greater strength in combating terror financing, as they must now act under international standards in addition to domestic standards.¹³¹

For example, Israeli authorities have established provisions for criminalizing the act of rewarding a terrorist action, classifying an entity as an international "terrorist organization" with no connection to Israel, handling an Israeli citizen who finds himself involved in a monetary transaction with suspected terrorist connections, and—the strongest provision instituted by the international standards—permitting the Israel government to administratively seize money with suspected ties to terrorism.¹³²

4.2. Iraq

Under the newly instituted government in Iraq, the immediate attention given to terror financing is worth noting. In 2004, the Coalition Provisional Authority ("CPA")¹³³ instituted an Anti-Money Laundering Act ("AML")¹³⁴. This law criminalizes money laundering and terror financing in an effort to secure the newly formed financial sector within Iraq. Specifically, the CPA instituted jurisdiction over banking institutions by instituting vigilance requirements.¹³⁵ The AML also delegated authority to the Iraqi Central Bank to create and publish additional restrictions and regulations in the future.¹³⁶

¹³¹ See Bernadette M. Chala et al., *The Middle East*, 39 INT'L LAW. 597, 607–11 (2005) (describing the PFTL and its effects).

¹³² *Id.* at 607–09.

¹³³ For a description of the Coalition Provisional Authority, see Tom Parker, *Prosecuting Saddam: The Coalition Provisional Authority and the Evolution of the Iraqi Special Tribunal*, 38 CORNELL INT'L L.J. 899 (2005).

¹³⁴ Anti-Money Laundering Act of 2004, Coal. Provisional Auth. Order No. 93 (June 3, 2004) (Iraq), available at http://www.cpa-iraq.org/regulations/20040603_CPAORD_93_Anti-Money_Laundering_Act_of_2004_with_Annex.pdf (criminalizing money laundering and structured transactions that finance crime and terrorism, defining responsibility and obligations of financial institutions and methods of enforcement).

¹³⁵ *Id.* arts. 15–23.

¹³⁶ *Id.* art. 7(1)(b).

In further addressing terror financing, the CPA acknowledged the need to revamp the Iraqi banking industry itself. CPA Order 94: (1) included a definition for "senior bank official"; (2) consolidated the authority of the Central Bank by providing that actions by government entities, other than the Central Bank, which impact matters subject to the Central Bank's jurisdiction shall be without legal force; (3) removed a limit on the total number of bank licenses controlled by foreign persons; (4) permitted foreigners to hold shares in existing or new domestic banks; and (5) reserved the provision that foreign banks shall maintain assets in Iraq in excess of their liabilities to Iraqi residents if required by the Central Bank.¹³⁷

Although it may be too soon to discuss Iraqi examples for lessons of effectiveness, this example is helpful in enunciating the international recognition of terror financing as an immediate threat necessitating attention.

4.3. England

The United Kingdom has extensive experience with terror financing, in part because of its struggle with the Irish Republican Army ("IRA").¹³⁸ In response to the IRA, the U.K. government has worked to cut off terror financing by focusing legislation on robberies and tax fraud. However, as the IRA moved into the political sphere, it began to use more sophisticated networks of organized crime. Thus, the United Kingdom's focus turned toward drug money in the effort to curb terror financing. The events of 9/11 did not radically shake-up the U.K. legislative efforts against terror financing; rather the United Kingdom merely tweaked the existing standards in an effort to more effectively stop terror financing.¹³⁹

The first major anti-terrorism legislation in the United Kingdom was the Terrorism Act of 2000.¹⁴⁰ However, despite this

¹³⁷ Banking Law of 2004, Coal. Provisional Auth. Order No. 94 (June 6, 2004) (Iraq), available at http://www.iraqcoalition.org/regulations/20040607_CPAORD94_Banking_Law_of_2004_with_Annex_A.pdf (establishing a banking system for the promotion of economic growth and development in Iraq).

¹³⁸ See, e.g., Laura K. Donohue, *Anti-Terrorist Finance in the United Kingdom and United States*, 27 MICH. J. INT'L L. 303 (2006) (examining the limitations of current U.K. and U.S. anti-terrorist finance laws and efforts, and the need to move beyond the traditional anti-money laundering tools).

¹³⁹ *Id.*

¹⁴⁰ Terrorism Act, 2000, c. 11. (Eng.) (detailing the types of criminal activities

enactment, the attacks of 9/11 brought English legislators back to the table to further expand counterterrorism law in the United Kingdom. This led to the Anti-terrorism Crime and Security Act,¹⁴¹ which established the power of the government to confiscate money believed to have ties to terrorist organizations.¹⁴² This legislation operates as a check by stripping the judiciary of jurisdiction regarding the freezing of assets located outside of the United Kingdom.¹⁴³

Beyond broadening the government's power to seize assets, the legislation also made it a criminal offense to operate in the "regulated sector" and not inform law enforcement of suspicious activity.¹⁴⁴ In short, the response from the United Kingdom to the escalation of international terrorism follows very closely to legal developments within the United States. The British government acted to ensure that (a) people putting money into the financial system were regulated and that (b) people working in the financial system were also regulated.

The brief discussion of terror financing legislation in Israel, Iraq, and England highlights the fact that (a) this is not merely an issue for the United States to consider, and (b) that these international actors need to pool their resources together in order to cast an international net to fight terror financing.

5. FREEDOM OF RELIGION

The discussion thus far has focused on the necessity of government action against terror financing. However, as with any counterterrorism discussion, there are ancillary concerns. For instance, when discussing coercive interrogation, the ancillary consideration is the question of constitutional rights and protections extending to non-citizen detainees. In discussing targeted killing, the ancillary question is the juxtaposition of a

associated with terrorism and counter-terrorist tactics supported by the government as well as procedures for the prosecution and punishment of certain offenses related to terrorism).

¹⁴¹ Anti-terrorism, Crime and Security Act, 2001, c. 24, (Eng.).

¹⁴² *Id.* § 1.

¹⁴³ If the Treasury believes that a non-U.K. entity is a threat to British nationals, the Treasury official institutes a statutory provision to seize that entity's assets for 28 days (a time period which can be extended by an order of Parliament). *Id.* § 10(3).

¹⁴⁴ *Id.* § 17-20 (extending disclosure powers but placing restrictions on certain disclosures).

state's interest in security against an individual's interest in physical autonomy. In discussing terror financing, an ancillary question is the freedom of religion.¹⁴⁵

Specifically, the question here is the interplay between the governmental eradication of terror financing and the protection of one's freedom to exercise religion. After 9/11, the United States has been willing to act in a heavy handed manner in the name of national security, and the Muslim community often suffers some of the hardest blows. However, many see the role of Islam in the 9/11 attacks as justifying such governmental actions. It is important to note, though, that everything done in the halls of the American government establishes precedent. What is today affecting the Islamic community could just as easily be turned against Christian or Jewish communities in the future. The goal is to recognize the great need for targeting terror financing while still preserving the freedom of religion.

Before discussing the specific balance of national security and the freedom of religion, it is important to understand the specific contours of the freedom of religion itself. The importance given by the framers of the Constitution to religious freedom in the United States makes the United States unique in comparison to many other governmental frameworks. For example, the Muslim world presents numerous examples of restricting religious freedoms, such as the story of Dhabihu'llah Mahrami, who, having long been of the Bahá'í faith, was imprisoned for ten years for apostasy.¹⁴⁶

5.1. *In general*

Religion first appears in the U.S. Constitution in the "Test Oath Clause" of Article VI: "[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."¹⁴⁷ This clause was clearly inserted as a rejection of England's historical requirement that all political office holders swear allegiance to the Church of England, or at least to Protestantism in general. Thus, the "Test Oath Clause" prohibits the insertion of any religious litmus test into the qualifications of holding office in the United States.

¹⁴⁵ U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .").

¹⁴⁶ See Ray Rivera, *Bahais Mourn Iranian Jailed for His Faith*, WASH. POST, Jan. 30, 2006, at B3 (describing the Iranian government's persecution of Bahá'ís).

¹⁴⁷ U.S. CONST. art. VI, cl. 3.

When developing the Bill of Rights, the framers referred to the freedom of religion as the "first freedom."¹⁴⁸ As pointed out by Grace Smith of the Heritage Foundation, this right was listed first because:

[R]eligious freedom is a natural right that cannot justly be withheld. Its importance is underscored in the Second Vatican Council's declaration on religious liberty, *Dignitatis Humanae*, which recently celebrated its 40th anniversary. Promulgated by Pope Paul VI on Dec. 7, 1965, the document reasserts the Catholic Church's teaching that religious freedom is a right that innately belongs to every individual simply because of his or her humanness.

"The right of man to religious freedom has its foundation in the dignity of the person," it reads, "whose exigencies have come to be . . . fully known to human reason through centuries of experience." Here is a religious claim about human dignity that can resonate with Catholics and non-Catholics alike in its appeal to reason, experience and moral intuition.¹⁴⁹

Delving further into history to understand the contours of America's freedom of religion, Congressman James Madison of Virginia and Congressman Fischer Ames of Massachusetts were both instrumental in the adoption of this clause.¹⁵⁰ These two individuals highlight two central reasons for having a freedom of religion clause in the United States. First, Massachusetts still had churches in 1790 that were established by state law. Thus, Congressman Ames noted the problems that would arise if the

¹⁴⁸ See Grace V. Smith, *Forum: Rethinking the First Freedom*, WASH. TIMES, March 12, 2006, at B5 (discussing the persistent resistance to the notion of religious liberty around the world despite the increasing popularity of democratic).

¹⁴⁹ *Id.*

¹⁵⁰ See 1 ANNALS OF CONG. 766 (Joseph Gales ed., 1834) ("On motion of Mr. Ames, the fourth amendment was altered as to read 'Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.'"); *id.* at 434 (statement of Rep. Madison) ("The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.").

Federal Congress ever decided to establish a federal church.¹⁵¹ This foresight led to Ames demanding the prohibition of Congress to institute religion.¹⁵² Second, then, was concern for unity amongst the American states. There were clearly differences in religious and theological beliefs among the states (as noted by the presence of Congregationalists, Baptists, Quakers, Methodists, and Episcopalians).¹⁵³ Thus, instituting freedom of religion would serve to prevent conflicts from trying to coalesce all of these religious vantage points into one cohesive church.¹⁵⁴

This protection of the freedom of religion, however, has posed many great dilemmas throughout American history. While not at issue in this discussion, some examples of the issues raised include whether religious groups may meet on public grounds, whether bankruptcy laws may prohibit or curtail one's tithing, whether religious groups may act in the political sphere, and whether the Pledge of Allegiance may have the words "under god" contained therein.¹⁵⁵ The question raised in this Article, however, is whether one's freedom to religion means a freedom to donate money under the name of religion (such as the giving of money to *hawala* brokers) without any government intrusion or oversight. An additional question, which extends thereon, is whether

¹⁵¹ See, e.g., Noah Feldman, *The Intellectual Origins of the Establishment Clause*, 77 N.Y.U. L. REV. 346 (2002) (analyzing the ideas and arguments used in the early debates regarding the separation of church and state).

¹⁵² *Id.* at 403.

¹⁵³ *Id.* at 372-74.

¹⁵⁴ See Russell Kirk, Distinguished Scholar, Heritage Found., Speech at The Heritage Foundation marking the U.S. Constitution's bicentennial: The First Clause of the First Amendment: Politics and Religion (Dec. 9, 1987) (transcript available at http://www.heritage.org/Research/PoliticalPhilosophy/upload/92736_1.pdf) (explaining reasons that existed for advocating the religion clause of the First Amendment).

¹⁵⁵ See generally Francis J. Beckwith, *The Court of Disbelief: The Constitution's Article VI Religious Test Prohibition and the Judiciary's Religious Motive Analysis*, 33 HASTINGS CONST. L.Q. 337 (2006) (criticizing the courts for employing a religious motive analysis that targets beliefs and violates Article IV); Tara P. Beglin, Note, "One Nation Under God," *Indeed: The Ninth Circuit's Problematic Decision to Change Our Pledge of Allegiance*, 20 ST. JOHN'S J. LEGAL COMMENT. 129 (2005) (arguing that the Ninth Circuit erred in ruling that a school's policy of reciting the Pledge violated the First Amendment's Establishment Clause); Michael Stokes Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on "Equal Access" for Religious Speakers and Groups*, 29 U.C. DAVIS L. REV. 653, 653 (1996) (arguing that the Constitution does not authorize or permit the government to discriminate against religious speakers on the basis of religious content, viewpoint, or religious identity of the speaker).

governmental oversight creates fear in potential givers, which could cause them to feel that their freedom of religion is being abridged. While the post-9/11 world may warrant the application of stringent governmental oversight, such a response is no more permissible than stating that one's freedom to religion is absolute and that Muslims ought to have unfettered access to the hawala system to practice their religious obligations. Neither extreme may be held as permissible; rather, the two must be balanced against each other.

5.2. *Freedom of Religion Applied to Terror Financing*

Is it a violation of one's freedom of religion to require IVTS networks to register? Is it a violation of one's freedom of religion to require banks to "know their customers"? Is it a violation of one's freedom of religion to require people giving money through an IVTS to provide identification and maintain a paper trail? The answer to all of these is no. The government must be able to enact legislation in the name of counterterrorism, and, as terror financing is at issue in such an effort, legislation must be permitted to impact the financial markets and transfer systems without an overly burdensome concern for a tangential impact on religious freedom.

At the outset, it is incorrect to suggest that freedoms are absolute. This interpretation would become cognizable to anyone who chooses to go into a crowded movie theatre and yell "fire."¹⁵⁶ Despite a right to free speech, there are limitations, one being that you cannot yell "fire" in a crowded area without the existence of an actual fire.¹⁵⁷ Thus, this discussion must begin with an understanding that even though we hold our rights closely in the United States, they are all subject to some level of limitation, the question merely being how much limitation.

In the 1990s, the United States was forced to address a new contour of the freedom of religion debate. Specifically at issue was

¹⁵⁶ See *Schenck v. United States*, 249 U.S. 47, 52 (1919) (stating that the nature of an act is largely dependant on the circumstances surrounding the behavior); Robert Tsai, *Fire, Metaphor, and Constitutional Myth-Making*, 93 GEO. L.J. 181, 196-97 (2004) (discussing how the fire metaphor used by the Supreme Court serves an important function in legal culture by creating an image of unprotected expression).

¹⁵⁷ See *Schenck*, 249 U.S. at 52 (equating the panic caused by a false alarm with other harms the government has an interest in preventing); Tsai, *supra* note 156, at 196-97 (explaining the powerful nature of the fire imagery used by courts in constructing legal analogies).

the scope of governmental restrictions on the right of citizens to freely practice their religion. In *Employment Division v. Smith*,¹⁵⁸ the U.S. Supreme Court held that the Free Exercise Clause does not protect religiously-motivated conduct from legislation that is "neutral" and "generally" applicable.¹⁵⁹ This decision, however, was decried across the country, and Congress immediately responded by adopting the Religious Freedom Restoration Act ("RFRA"), which restored the traditional views of religious freedoms.¹⁶⁰

RFRA responded to the Court's elimination of the "compelling interest test" for cases where the government has burdened one's freedom to exercise their religion. Specifically, RFRA states that the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."¹⁶¹ However, Congress's re-articulation of the freedom of religion was not without limitations. Rather, it limited its own rule by noting that such a holding is excepted, as the government may apply a burden if there is a compelling governmental interest, and it does so by using the least restrictive means of furthering the stated compelling governmental interest.¹⁶²

Thus, although both the Court and Congress attempted to more clearly address this issue of how much the government may step into one's practice of religion, the question remains unsettled. It is clear, though, that *some* governmental intrusion is permitted.

In balancing national security and the freedom of religion in the context of regulating the financial sector, the operative question concerns the centrality of giving money through IVTS networks to Islam. This is the central question because the more fundamental the use of IVTS networks is to Islam, the greater the impact regulations may have on religious freedom. The Specifically Designated Terrorist ("SDT") list, created by President Clinton's Executive Order 12,947, serves as an effective analytical tool.¹⁶³

¹⁵⁸ 494 U.S. 872 (1990).

¹⁵⁹ This is important here because the government could potentially promulgate very restrictive rules so long as they do not identify a specific religion or class of people.

¹⁶⁰ Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb (2000).

¹⁶¹ 42 U.S.C. § 2000bb-1(a).

¹⁶² 42 U.S.C. § 2000bb-1(b)(1)-(2).

¹⁶³ Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process, Exec. Order No. 12,947, 60 Fed. Reg. 5079 (Jan. 25,

This list was then broadened by President Bush after the 9/11 attacks through Executive Order 13,224, which created the Specially Designated Global Terrorist ("SDGT") blacklist.¹⁶⁴ This second list broadened Clinton's list through the inclusion of global terrorists, rather than only groups participating in the Middle East peace process. The creation of both of these lists raised multiple freedom of religion claims from charities on the blacklists.

To examine the question of whether the government's legislative action against SDGTs comports with the Constitution's freedom of religion, a discussion of the Holy Land Foundation ("HLF") case¹⁶⁵ is illuminative. HLF argued, similar to many other SDGT organizations, that the blacklist was in violation of RFRA, and thus was a violation of the freedom of religion in general.¹⁶⁶

In *Holy Land Foundation for Relief and Development v. Ashcroft*,¹⁶⁷ the District Court for the District of Columbia employed two lines of analysis. The Court first analyzed HLF's argument of substantial burden on its free exercise of religion, and secondly the court analyzed HLF's argument of substantial burden on behalf of HLF's donors and employees.¹⁶⁸ In short, HLF argued that their work in accepting and using donations from Muslims was the "free exercise of religion" as such actions fulfilled the Islamic religious obligation of *zakat*.¹⁶⁹

The court responded by holding that HLF failed to show that it was, in fact, a religious organization rather than just a "nonprofit charitable corporation."¹⁷⁰ Thus, if an entity is found not to be a religious organization, it follows that there is no need to reach a discussion of RFRA.¹⁷¹ The second holding, then, is not applicable here, as the court rested its denial on a question of the standing of HLF to raise an argument on behalf of third parties.¹⁷² Applicable

1995).

¹⁶⁴ Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 25, 2001).

¹⁶⁵ *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57 (D.D.C. 2002), *aff'd*, 333 F.3d 156 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1218 (2004).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 83-84.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ 42 U.S.C. § 2000bb.

¹⁷² *Holy Land*, 219 F. Supp. 2d at 84.

here, though, is the dicta from the D.C. Circuit where the Court held that HLF was participating in the furtherance of terrorism, and, as terrorism is not mandated by any religion, promoting terrorism is not protected.¹⁷³ Thus, this case shows that legislation prohibiting the financing of terrorism cannot in and of itself be argued as a violation of the freedom of religion clause because the financing of terrorism cannot be argued to be an exercise of religion. However, such a broad statement may fail to recognize that legislation aimed at terrorism has tangential impact that infringes on a particular right. As such, the operative issue remains: balancing.

Although this discussion highlights the proposition that the government possesses the power to enact legislation aimed at the institutions purportedly financing terrorism, the corollary question is whether the government can do so if such actions impact the donor. Similar to the judicial response to the IVTSs, which would be the same as the response to HLF's arguments, an individual donor must show that his or her act of giving money to an IVTS is a "religious act," that the entity receiving the money is a religious organization, and that the legislation unduly infringes on the use of the IVTS. Donors would have to emphasize that these entities and charities exist not merely for their humanitarian work, but rather for their direct role in providing a place for Muslims to practice *zakat*.

However, the SDGT list and other financial actions against purported financiers of terrorism merely prohibit the use of charities and monies for terrorism. Thus, unless terrorism is a religious mandate, then both charities and donors lack standing to raise such arguments. Implicit, though, in this balance is the fact that the discussion is not truly this black-and-white. The IVTS may, in fact, be used as an avenue for religious exercise, and the anti-terror financing legislation may only be targeted at giving money to terrorism. But an individual may feel unduly spied upon by any anti-terror financing legislation despite the person's wholly innocent use of the IVTS network.

There remains a delicate balance between the desires for a broad freedom of religion in the United States and an

¹⁷³ See *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 167 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1218 (2004) ("Acting against the funding of terrorism does not violate the free exercise rights protected by RFRA and the First Amendment. There is no free exercise right to fund terrorists.").

understanding that actions currently permitted towards the Muslim community could tomorrow stand as precedent for actions against the Christian or Jewish communities. Nevertheless, there is still a distinct and palpable competing governmental interest in eradicating the financing of terrorism.

6. CONCLUDING RECOMMENDATIONS

Given the panoply of interests at stake, it is important to find the proper balance of both national security and religious freedom. The government of the United States, through the Department of Justice, has a duty to act in a proactive way to eliminate terrorism. In doing so through a proper balancing of all interests, any recommendations must respect: (1) the freedom of religion, (2) the free market, and (3) the need for national security.

With these considerations in mind, the approach is two-fold. First, the government bears responsibility to guarantee that their actions are both effective and not overly broad. Second, from the grassroots, "man-on-the-street" perspective, there are enormous responsibilities in making sure that people will not abuse the IVTS networks in support of terrorism. To this end, the following recommendations aim at both the "top-down" governmental role and the "bottom-up" individual role in attempting to orchestrate a system that will both curb the financing of terrorism while protecting one's right to free exercise of religion:

(1) All persons operating any form of an Informal Value Transfer System must register with the federal government by providing contact information and a registered address. Further, the definition of IVTS needs to be broad enough to cover any derivation thereof. This will provide the Department of Justice with a list of entities engaging in the above described financial activities, allowing for easier monitoring of the specific legality of the IVTS's activities. Effective monitoring should help to prevent broad freezing of assets.

(2) When the government freezes the assets of an entity, the government must proactively look through the registered transactions to decipher which of them did not support terrorism. Those transactions that are then found not to support terrorism must be restored as quickly as possible.

(3) A record of all transfers made through any form of an IVTS must be kept by both the IVTS agent and the consumer transferring the money. This will provide an easier window

through which to view legality, making it far more likely that the government will not need to broadly shut down organizations due to a lack of information.

(4) In the event that an IVTS is suspicious that its system is being used for the illicit purposes of financing terrorism, the IVTS agent must both refuse to effectuate such a transfer as well as notify the proper governmental authorities.

(5) The government must be able to articulate a *prima facie* case for any action that either shuts down an IVTS or freezes the assets of such an entity. This requirement will serve to prevent the government from overstepping its authority in sweeping actions.

(6) Anti-terrorism financing legislation must require oversight and registration for *any* sum of money transferred. Caps, whether they be \$10,000 or \$3,000, are too easily abused where no obligations exist for transferring sums under the limits.

(7) The United States government must take a *proactive* approach to IVTSs and *hawalas* where the government investigates the existence thereof, rather than tacitly using reporting requirements. Under this proactive approach, the government would have an enforcement wing whose sole duty is to find IVTS networks existing on American streets. This is not to proactively shut these entities down; rather, the job is to only make a record of the network's existence, so as to make monitoring easier.

(8) The United States needs to use its international weight to coerce other nations to institute similar legislative mechanisms aimed at eliminating terrorist financing. Without international support, the domestic efforts in the United States are moot, as financiers can simply go to other countries for such transactions.

(9) Enforcement cannot target only a small number of store-front operations, but rather must address the entity as a whole. Many IVTS networks have significant operations around the world. Thus, enforcement actions must be aimed at the central organization, not just the person on the street.

(10) Traditional concepts of money laundering cannot be used in fighting terrorist financing; rather, the government must look for any illicit *intent*, not whether the money itself is "clean" or "dirty" at the time of the transfer. Transferring "clean" money must make the money illegal immediately upon either a showing of a future intent to support terrorism or willful blindness of such support.

(11) Any efforts to curb the financing of terrorism must take significant steps to proactively protect the freedom of religious exercise. When establishing limits and procedures for IVTS

networks, such procedures cannot be so burdensome that they infringe on one's freedom to practice one's religion. But, from the ground level, individuals using IVTS networks must recognize the abuses being perpetrated upon these networks, and, in acknowledging those abuses, they must accept a heightened amount of scrutiny.

The matter of containing and eliminating terrorism is clearly multifaceted. The goal of this discussion has been to first illuminate one of the most powerful and dangerous aspects of terrorism, the use of regular financial markets. From there we examined whether approaching terrorist financing in the same way as traditional money laundering was a proper venture. Unfortunately, the discussions above, as well as the 9/11 attacks themselves, show that such treatment was not, in fact, sufficient.

Lastly, the above discussion employed the essential tool of balancing. The act of balancing when formulating effective anti-terrorism financing legislation considers the government's interest in protecting the citizenry and the competing interest of the individual's freedom to freely exercise religion.

Throughout this morass of interests, the concluding recommendations highlight that the answers are neither purely governmental nor individual. Rather, the government and the people must each take up their own responsibilities to effectuate an end to the abuse of financial markets in the name of financing terrorism.